

BOARD OF APPEALS CASE NO. 5097

BEFORE THE

APPLICANT: Vanguard Commercial Development Inc.

ZONING HEARING EXAMINER

REQUEST: Special Exception to construct and use accessory parking, driveway and private road in the R2 District; west side of Abingdon Road, Abingdon (on remand)

OF HARFORD COUNTY

Hearing Advertised

Aegis: 5/18, 5/23, 8/3 & 8/8/01

HEARINGS: June 13 and September 17, 2001

Record: 5/18, 5/25, 8/3 & 8/10/01

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ZONING HEARING EXAMINER'S DECISION

On October 6, 2000, Vanguard Commercial Development, Inc.. (hereinafter the "Applicant"), filed a request for a special exception pursuant to Section 267-53(K) of the Harford County Zoning Code ("Code") to construct and use an accessory parking area in an R2 District to serve a use permitted and located in another district and not permitted in the R2 District. The subject property is particularly identified among the land records of Harford County on Tax Map 61, Parcel 424. The matter came on for hearing before the Hearing Examiner for Harford County on December 18, 2000. On January 17, 2001, the Hearing Examiner issued his decision recommending approval of the Applicant's request for special exception with conditions. The Protestants filed a timely request for final argument to the Harford County Council sitting as the Board of Appeals. Final argument was held before the Council/Board. At the conclusion of final argument the Council/Board voted 6 to 1 to remand the case to the Hearing Examiner for additional testimony to:

1. Clarify the Hearing Examiner's proposed condition number 3 regarding the 50 foot buffer area and identify both the entire location of this proposed buffer and the contour of the buffer.
2. Identify the impact that the proposed parking lot will have upon Lou Mar Drive and Woodspring Drive.
3. Clarify whether the 25 foot setback of the proposed parking lot as identified on Attachment 3 extends either into Lou Mar Drive or Woodspring Drive.
4. Determine whether either or both Lou Mar Drive and Woodspring Drive are public or private roads.

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5. Identify whether Lou Mar Drive and/or Woodspring Drive can be utilized to establish ingress and egress from the proposed parking lot on the subject parcel.
6. Identify specifically the location of all residential property or structures which either are located on the subject parcel or adjacent to the subject parcel and determine what, if any, impact the proposed parking lot will have on these structures and any residents. (collectively hereinafter referred to as the "Remand Issues")

Although each of these issues was fully addressed during the initial testimony in this case and were considered carefully by the Hearing Examiner in rendering his initial decision, additional testimony was taken limited to the 6 questions presented to the Hearing Examiner on remand from the Board of Appeals.

1. Clarify the Hearing Examiner's proposed condition number 3 regarding the 50 foot buffer area and identify both the entire location of this proposed buffer and the contour of the buffer.

Mr. Frank Hertsch appeared and qualified as an expert engineer. Mr. Hertsch identified the buffer area on Applicant's Exhibit 13-1, by writing the word "buffer" on the exhibit. The 50 foot buffer surrounds the special exception area subject to this request. It is important to note that the special exception area subject to this request does not include the already approved Giant food store, parking area and access driveway. The Applicant's request is limited to an R2 zoned parcel adjacent to the B3 zoned parcel planned for the Giant Foods supermarket. The Applicant intends to add additional parking spaces in this area to serve the B3 property. The witness described this parking area as being 8-10 feet above grade with a slope of 2:1. Landscaping will be added to the buffer to screen both the R2 use and the B3 use from the view of adjacent residential uses. Mr. William Monk, an expert land planner, pointed out that a 50 foot landscaped buffer can only exist if this request is granted. In other words, absent an approval of this special exception, no buffer area of trees or other vegetative screening is planned or required. The protestants offered no evidence contradicting this finding of fact.

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2. **Identify the impact that the proposed parking lot will have upon Lou Mar Drive and Woodspring Drive.**

While the boundary line of the R2 parcel subject to this request extends to Lou Mar Drive, which becomes Woodspring Drive, there is a planned buffer area as described above which separates Lou Mar Drive from the paved portion of the parking area. Other than the normal impacts associated with a parking area separated from a road by a landscaped buffer area, the Hearing Examiner is unaware of any other impacts to the two roads identified herein associated with this parking use, nor was there any evidence presented by the protestants contrary to that conclusion.

3. **Clarify whether the 25 foot setback of the proposed parking lot as identified on Attachment 3 extends either into Lou Mar Drive or Woodspring Drive.**

Mr. Frank Hertch testified that the 25 foot buffer line shown on the Attachment is not a setback required by Harford County but, rather, is a design line added to the drawings by the designer and indicates an area that will be graded and landscaped. This “setback” line is merely a paper line and has no impacts whatsoever associated with it. While the line appears to extend into the road, there will be no actual impact to the road resulting from this design line. The protestants offered no evidence contradicting this finding of fact.

4. **Determine whether either or both Lou Mar Drive and Woodspring Drive are public or private roads.**

Records of the Harford County Department of Public Works, accepted as Applicant's Exhibits 13-1 and 3-2 indicate that some portions of Lou Mar Drive and Sedberry Lane have been taken into the County road system. There is no evidence that Woodspring Drive was ever placed within the county road system, or, in fact, was ever even constructed. According to the witness, Mr. Hertsch, the area of Woodspring Drive adjoining the special exception area is currently not paved and is, at best, a dirt road in this area. Mr. Hertch also pointed out that the formerly dedicated portion of Lou Mar Drive ends prior to its joining with the parcel boundary of the special exception area. The area of Lou Mar Drive coinciding with the special exception area is a private dirt road in a trailer park. The

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protestants offered no evidence contrary to this finding of fact.

5. **Identify whether Lou Mar Drive and/or Woodspring Drive can be utilized to establish ingress and egress from the proposed parking lot on the subject parcel.**

Each of the Applicant's witnesses indicated that there were no plans to provide ingress or egress through the special exception area as part of the planned parking lot use. Mr. Hertsch admitted that it was theoretically possible to do so but that the Applicant had no desire to create such access. The witness suggested that a condition be added to any approval that would prevent any such future access. The protestants offered no evidence contrary to this finding of fact.

6. **Identify specifically the location of all residential property or structures which either are located on the subject parcel or adjacent to the subject parcel and determine what, if any, impact the proposed parking lot will have upon these structures and any residents.**

This question resulted in the majority of the discussion and testimony heard by the Hearing Examiner. This is a parking lot addition and does not in any way change the development of the adjoining B3 property as a supermarket with access, nor will the already existing access driveway be altered as a result of this request – it already is approved and in use and is not the subject of this request. This request is simply to utilize an additional adjoining property, currently zoned R2, as a parking area to serve the B3 adjoining property. There will be additional parking spaces created which will handle overflow parking. The parking area will create 8000 square feet of additional impervious surface area.

The Protestants claimed that the parking area would create additional traffic under a theory that more parking equals more traffic. However, upon cross examination, the Protestants' expert witness, Mr. John Erdman, admitted that additional parking space does not result in additional traffic, it is additional retail sales space that can result in additional traffic. The Protestants were unable to provide any evidence that the Applicant planned any enlargement to the retail space already approved and constructed and this theory amounts to no more than unsupported speculation. Moreover, Mr. Erdman admitted that traffic coming into and leaving the supermarket will impact the adjoining residential properties

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whether this special exception is granted or not since this special exception area involves an additional parking area only.

The Protestants speculated that teenage parties would be held on this additional parking area resulting in the adverse impacts normally associated with such activity. No evidence was presented that such teenage activity would not occur on the remainder of the parking lot even if this special exception were not granted. The Hearing Examiner was offered no evidence that the creation of this parking lot would result in some unique encouragement for such activities that does not already exist on the B3 parking area and many other parking areas associated with commercial activities throughout Harford County.

The Protestants offered as an expert, Mr. Paul Thompson who qualified as an expert in environmental impacts. Mr. Thompson stated that any impervious parking area will have associated with it the normal oil, gas and other contaminants associated with automobile usage. He described the normal mitigation process as creation of stormwater management areas similar to those shown on the Applicant's site plan to capture the run off from impervious surface areas. In summary, Mr. Thompson indicate that creation of this additional 8000 square feet of impervious surface area would contribute substantial additional oil and gas run off to the stormwater management facility adjacent to the Patten property. Mr. Hertsch testifying for the Applicant, successfully rebutted this theory by pointing out that the topographic high point of the property occurs between the Patten property and the special exception area and thus, any run off created will run downhill and away from the Patten property and not to it.

The Protestants proffered theories that the additional parking area would encourage trucks to park overnight in the area with diesel engines running. The protestants also stated that approval of the Special Exception would result in more truck access along the driveway to Abingdon Road. Neither of these theories was supported by credible evidence and amounts to speculation. In fact it is equally plausible that, in accordance with the Applicant's testimony, that the additional parking area can be designed to discourage overnight truck parking and will allow a greater turning radius to allow ingress and egress directly onto Rte 924 which would not exist but for the use of this additional parking area.

Lastly, the protestants attempted to re-examine the legality of the approvals for the B3 use by Giant supermarket. In the opinion of the Hearing Examiner, it is the already approved use of the B3 parcel by Giant that is the gravamen of the protestant's objections

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and not the additional and minor creation of additional parking area. Clearly, the existing supermarket will create traffic and have impacts on the protestant's property that are normally associated with such commercial uses in a B3 zone. However, those impacts will exist whether or not the requested special exception use is approved or disapproved.

CONCLUSION:

The Hearing Examiner has set forth specific findings of fact regarding the questions presented upon remand. These same issues were examined and addressed by the Hearing Examiner during the taking of testimony during the initial hearings in this case. It is of note that one of the protestants appeared during the initial taking of testimony and stated that he had no objection to the proposed parking area and reiterated that testimony upon remand. In the opinion of the Hearing Examiner, the appropriate standard of review was applied to this request. The Applicant demonstrated that its proposed use could meet or exceed all of the statutory requirements set forth in the Harford County Code. Moreover, the Hearing Examiner applied the mandates of Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981) to conclude that this use at this location will have no adverse impacts above and beyond those normally associated with such a use regardless of its location within the zone. If anything, the additional evidence developed on remand further substantiated the Hearing Examiner's earlier conclusion. In Maryland, the localized impact caused by a special exception must be unique and atypical in order to justify denial. Sharp v. Howard County Board of Appeals, 98 Md. App. 57, 632 A.2d 248 (1993). In this case the impacts associated with the proposed use are much like the impacts associated with any other overflow parking area despite its location. In this case the impacts are somewhat mitigated by the creation of a substantial landscaped buffer proposed by the Applicant and required by the Hearing Examiner as a condition of approval.

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The burden of proof shifted to the protestants once the Applicant met its initial burden. The protestant failed to present any credible evidence regarding the adverse impacts associated with this overflow parking area that would lead to a conclusion that denial would not be arbitrary and capricious. The Hearing Examiner recognizes that there are substantial impacts to the protestants' property resulting from the adjacent B3 use, namely a Giant supermarket, but those issues are not before the Hearing Examiner or the Board and have not been addressed herein. That use has already been approved and is currently under construction.

The Hearing Examiner adopts herein his original recommendation of approval and conditions set forth in the original Decision dated January 17, 2001. The Hearing Examiner imposes the following two additional conditions of approval.

1. That the Applicant and any future purchaser or user of the subject parcel shall be prohibited from establishing from this parcel a point of ingress or egress to or from Lou Mar Drive and/or Woodspring Drive.
2. That the parcel be used for additional parking spaces only and configured in such a manner that overnight parking of trucks is discouraged. This may include design changes such as islands, additional vegetative plantings and should include signs indicating that no truck parking is allowed in this area. The Applicant shall submit a plan addressing these issues to the Department of Planning and Zoning as part of the final approval process.

Date OCTOBER 2, 2001

William F. Casey
Zoning Hearing Examiner